

1 BRIAN M. BOYTON
Principal Deputy Assistant Attorney General

2 MARCIA BERMAN
Assistant Branch Director

3 MICHAEL J. GERARDI
Senior Trial Counsel
4 Civil Division, Federal Programs Branch
5 U.S. Department of Justice
6 1100 L St., N.W.
7 Washington, D.C. 20005
Telephone: (202) 616-0680
E-mail: michael.j.gerardi@usdoj.gov

8
9 *Counsel for Defendant*

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 FOIA CONSCIOUSNESS.COM LLC,

13 Plaintiff,

14 v.

15 NATIONAL ARCHIVES & RECORDS
16 ADMINISTRATION,

17 Defendant,

18 DALLAS COUNTY HISTORICAL
19 FOUNDATION d/b/a THE SIXTH FLOOR
20 MUSEUM AT DEALEY PLAZA,

21 Respondent.
22
23
24
25
26
27
28

CASE NO. 3:24-cv-00997

**ANSWER TO COMPLAINT (ECF NO.
1) BY DEFENDANT NATIONAL
ARCHIVES AND RECORDS
ADMINISTRATION**

1 Defendant National Archives and Records Administration (“Defendant”) answers the
2 complaint filed by Plaintiff FOIAConsciousness.com, LLC (“Plaintiff”), ECF No. 1, as follows:

3 1. This paragraph contains Plaintiff’s characterization of this civil action, to which
4 no response is required.

5 2. This paragraph contains Plaintiff’s characterization of this civil action, to which
6 no response is required.

7 3. This paragraph contains Plaintiff’s legal conclusions as to the sufficiency of
8 Defendant’s response to Plaintiff’s FOIA request, to which no response is required.

9 4. This paragraph contains Plaintiff’s characterization of this civil action, to which
10 no response is required.

11 5. Defendant lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations in this paragraph.

13 6. Admitted that Plaintiff submitted a FOIA request to NARA by e-mail dated
14 December 12, 2023. Defendant respectfully refers the Court to that request for a complete and
15 accurate statement of its contents and denies any allegations inconsistent therewith. Denied that
16 the requested film reels are currently held by NARA in Baltimore, Maryland.

17 7. Admitted that NARA responded to Plaintiff’s FOIA request on December 22,
18 2023, and December 26, 2023. Defendant respectfully refers the Court to that response for a
19 complete and accurate statement of its contents, and deny any allegations inconsistent therewith.

20 8. Admitted that NARA responded to Plaintiff’s FOIA request on December 22,
21 2023, and December 26, 2023. Defendant respectfully refers the Court to that response for a
22 complete and accurate statement of its contents, and deny any allegations inconsistent therewith.

23 9. Denied.

24 10. The allegations in this paragraph do not set forth a claim for relief or aver facts in
25 support of a claim to which an answer is required. Furthermore, Defendant lacks knowledge or
26 information sufficient to form a belief as to the truth of the allegations in this paragraph.

27 11. This paragraph contains Plaintiff’s conclusions of law, to which no response is
28 required.

1 12. This allegation contains Plaintiff’s conclusions of law, to which no response is
2 required.

3 13. Plaintiff’s allegation that it is “statutorily entitled to disclosure of these videos” is
4 a conclusion of law to which no response is required. Defendant lacks knowledge or information
5 sufficient to respond to Plaintiff’s allegations that it seeks to “inform the public about the
6 Zapruder film” and that the Zapruder film “was suppressed from the public for many years.”

7 14. This allegation contains Plaintiff’s conclusions of law with respect to the Court’s
8 subject matter jurisdiction, to which no response is required.

9 15. This allegation contains Plaintiff’s conclusions of law with respect to venue, to
10 which no response is required.

11 16. This allegation contains Plaintiff’s conclusions of law with respect divisional
12 assignment, to which no response is required.

13 17. Defendant lacks knowledge or information sufficient to form a belief as to the
14 truth of the allegations in this paragraph.

15 18. Admitted that Defendant is an agency of the federal government for purposes of 5
16 U.S.C. § 551, 5 U.S.C. § 552(f), and 5 U.S.C. § 702. The rest of the paragraph states Plaintiff’s
17 conclusion of law that NARA has “possession, custody, and/or control of the records that
18 Plaintiff seeks,” to which no response is required.

19 19. Admitted.

20 20. Denied except to admit that Defendant responded to Plaintiff’s FOIA request via
21 e-mail on December 22, 2023, and December 26, 2023, and that the December 26 response
22 stated that Plaintiff could make a copy of the records in NARA’s research room. Defendant
23 refers the Court to that response for a complete statement of its contents.

24 21. Defendant lacks knowledge or information sufficient to form a belief about the
25 truth of the allegations in this paragraph.

26 22. Defendant lacks knowledge or information sufficient to form a belief about the
27 truth of the allegations in this paragraph.

28 23. This allegation contains Plaintiff’s conclusions of law with respect to joinder, to

1 which no response is required.

2 24. This allegation contains Plaintiff's conclusions of law with respect to joinder, to
3 which no response is required.

4 25. The allegations in this paragraph do not set forth a claim for relief or aver facts in
5 support of a claim to which an answer is required.

6 26. The allegations in this paragraph do not set forth a claim for relief or aver facts in
7 support of a claim to which an answer is required.

8 27. The allegations in this paragraph do not set forth a claim for relief or aver facts in
9 support of a claim to which an answer is required.

10 28. The allegations in this paragraph do not set forth a claim for relief or aver facts in
11 support of a claim to which an answer is required.

12 29. The allegations in this paragraph do not set forth a claim for relief or aver facts in
13 support of a claim to which an answer is required.

14 30. The allegations in this paragraph do not set forth a claim for relief or aver facts in
15 support of a claim to which an answer is required.

16 31. The allegations in this paragraph do not set forth a claim for relief or aver facts in
17 support of a claim to which an answer is required.

18 32. The allegations in this paragraph do not set forth a claim for relief or aver facts in
19 support of a claim to which an answer is required.

20 33. The allegations in this paragraph do not set forth a claim for relief or aver facts in
21 support of a claim to which an answer is required.

22 34. The allegations in this paragraph do not set forth a claim for relief or aver facts in
23 support of a claim to which an answer is required.

24 35. The allegations in this paragraph do not set forth a claim for relief or aver facts in
25 support of a claim to which an answer is required.

26 36. The allegations in this paragraph do not set forth a claim for relief or aver facts in
27 support of a claim to which an answer is required.

28 37. The allegations in this paragraph do not set forth a claim for relief or aver facts in

1 support of a claim to which an answer is required.

2 38. The allegations in this paragraph do not set forth a claim for relief or aver facts in
3 support of a claim to which an answer is required.

4 39. The allegations in this paragraph do not set forth a claim for relief or aver facts in
5 support of a claim to which an answer is required.

6 40. The allegations in this paragraph do not set forth a claim for relief or aver facts in
7 support of a claim to which an answer is required.

8 41. The allegations in this paragraph do not set forth a claim for relief or aver facts in
9 support of a claim to which an answer is required.

10 42. The allegations in this paragraph do not set forth a claim for relief or aver facts in
11 support of a claim to which an answer is required.

12 43. The allegations in this paragraph do not set forth a claim for relief or aver facts in
13 support of a claim to which an answer is required.

14 44. The allegations in this paragraph do not set forth a claim for relief or aver facts in
15 support of a claim to which an answer is required.

16 45. The allegations in this paragraph do not set forth a claim for relief or aver facts in
17 support of a claim to which an answer is required.

18 46. The allegations in this paragraph do not set forth a claim for relief or aver facts in
19 support of a claim to which an answer is required.

20 47. The allegations in this paragraph do not set forth a claim for relief or aver facts in
21 support of a claim to which an answer is required.

22 48. The allegations in this paragraph do not set forth a claim for relief or aver facts in
23 support of a claim to which an answer is required.

24 49. The allegations in this paragraph do not set forth a claim for relief or aver facts in
25 support of a claim to which an answer is required.

26 50. The allegations in this paragraph do not set forth a claim for relief or aver facts in
27 support of a claim to which an answer is required.

28 51. The allegations in this paragraph do not set forth a claim for relief or aver facts in

1 support of a claim to which an answer is required.

2 52. Denied except to admit that the Zapruder film was designated as an “assassination
3 record” by the Assassination Records Review Board, which was succeeded by Defendant.

4 53. Denied except to admit that by virtue of an arbitration decision made on August 3,
5 1999, the U.S. government paid \$16 million for the Zapruder film reels, but did not acquire the
6 copyright in the film.

7 54. The allegations in this paragraph do not set forth a claim for relief or aver facts in
8 support of a claim to which an answer is required.

9 55. Defendant admits, on information and belief, that the Sixth Floor Museum holds
10 the copyright over the Zapruder film, but otherwise responds that the allegation contains
11 Plaintiff’s conclusions of law about the validity of the Sixth Floor Museum’s copyright and
12 FOIA, to which no response is required. Defendant refers the Court to its responses to Plaintiff’s
13 FOIA requests for a complete and accurate statement of their contents.

14 56. This paragraph contains Plaintiff’s conclusions of law with respect to Defendant’s
15 response to its FOIA request, to which no response is required.

16 57. As to the first sentence, Defendant lacks knowledge or information sufficient to
17 form a belief about the truth of the allegations in this paragraph. The second sentence contains
18 Plaintiff’s conclusions of law with respect to FOIA, to which no response is required.

19 58. Denied except to admit that Defendant responded to Plaintiff’s FOIA request on
20 December 22, 2023, and December 26, 2023, and that the December 26 response stated that
21 Plaintiff could make a copy of the records in NARA’s research room. Defendant refers the
22 Court to this document for a complete statement of Defendant’s response to Plaintiff’s FOIA
23 request.

24 59. Admitted that Defendant responded to Plaintiff’s FOIA request on December 22,
25 2023, and December 26, 2023. Defendant refers the Court to this document for a complete
26 statement of Defendant’s response to Plaintiff’s FOIA request.

27 60. This paragraph contains Plaintiff’s conclusions of law with respect to Defendant’s
28 handling of Plaintiff’s FOIA request, to which no response is required.

1 61. This paragraph contains Plaintiff's conclusions of law as to how Defendant
2 should handle the requested records, to which no response is required.

3 62. Defendant lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations in this paragraph.

5 63. Defendant lacks knowledge or information sufficient to form a belief about the
6 truth of the allegations in this paragraph.

7 64. Defendant lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations in this paragraph.

9 65. Defendant lacks knowledge or information sufficient to form a belief about the
10 truth of the allegations in this paragraph.

11 66. Defendant lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations in this paragraph.

13 67. Defendant lacks knowledge or information sufficient to form a belief about the
14 truth of the allegations in this paragraph.

15 68. Denied except to admit that, on information and belief, The Sixth Floor Museum
16 holds the copyright to the Zapruder film.

17 69. The first sentence contains Plaintiff's conclusion of law with respect to the FOIA,
18 to which no response is required. Defendant lacks knowledge or information sufficient to form a
19 belief about the truth of the allegations in the second sentence.

20 70. Admit that Mr. Javitch, on behalf of Plaintiff, submitted a FOIA request to NARA
21 on December 11, 2023 via email. Defendant respectfully refers the Court to Plaintiff's FOIA
22 request for a complete and accurate statement of its contents and denies any allegations
23 inconsistent therewith.

24 71. This allegation contains Plaintiff's conclusions of law as to whether its request
25 complied with FOIA, to which no response is required.

26 72. Defendant admits that it sent a response to Plaintiff on December 12, 2023, and
27 respectfully refers the Court to that response for a complete and accurate statement of its
28 contents. Defendant denies any allegations inconsistent therewith.

1 73. Defendant admits that it sent a response to Plaintiff on December 22, 2023, and
2 December 26, 2023 December 22, 2023, and December 26, 2023, and refers the Court to that
3 response for a complete and accurate statement of its contents, and denies any allegations
4 inconsistent therewith.

5 74. Defendant admits that it sent a response to Plaintiff on December 22, 2023, and
6 December 26, 2023, refers the Court to that response for a complete and accurate statement of its
7 contents, and denies any allegations inconsistent therewith.

8 75. Defendant admits that Plaintiff filed an appeal, on December 24, 2023, and refers
9 the Court to that document for a complete and accurate statement of the substance of its contents,
10 and denies any allegations inconsistent therewith.

11 76. Defendant admits that it acknowledged Plaintiff's appeal on December 27, 2023,
12 and refers the Court to that document for a complete and accurate statement of its contents, and
13 denies any allegations inconsistent therewith.

14 77. Admitted.

15 78. Denied except to admit that, in addition to the December 22, 2023 response,
16 Defendant sent further responses to the FOIA request on December 26, 2023, and January 22,
17 2024. Defendant otherwise lacks knowledge or information sufficient to form a belief as to what
18 other information concerning the Request has been received or sent by Plaintiff.

19 79. This allegation contains Plaintiff's conclusions of law as to whether Defendant's
20 actions complied with FOIA, to which no response is required. To the extent a response is
21 required, denied as to part (a) except to admit Defendant acknowledged Plaintiff's appeal on
22 December 27, 2023. As to part (b), Defendant refers the Court to its responses of December 22,
23 2023, and December 26, 2023, for a complete and accurate statement of their contents.

24 80. Defendant incorporates by reference the foregoing paragraphs as if fully set forth
25 herein.

26 81. Admitted.

27 82. Admitted as to the first sentence. The second sentence contains Plaintiff's
28 conclusions of law as to whether it lodged a proper FOIA request, to which no response is

1 required.

2 83. Defendant admits that it responded to Plaintiff's FOIA request on December 22,
3 2023, and December 26, 2023, and refers the Court to those responses for a complete and
4 accurate statement of its contents, and denies any allegations inconsistent therewith.

5 84. Denied. Defendant refers the Court to its response of December 22, 2023, and
6 December 26, 2023, for a complete and accurate statement of the substance of the response, and
7 denies any allegations inconsistent therewith.

8 85. Defendant admits that Plaintiff filed an appeal, and refers the Court to Plaintiff's
9 appeal of December 24, 2023 for a complete and accurate statement of the substance of the
10 appeal, and denies any allegations inconsistent therewith.

11 86. Denied.

12 87. This allegation contains Plaintiff's conclusions of law, to which no response is
13 required.

14 The final paragraph of the complaint contains Plaintiff's prayer for relief, to which no
15 response is required. To the extent a response is required, Defendant responds that Plaintiff is
16 not entitled to any relief whatsoever.

17 The headings in Plaintiff's complaint are not factual allegations, and Defendant provides
18 no response to them.

19 Any allegations not expressly admitted or denied by Defendant are denied.

20 **AFFIRMATIVE DEFENSES**

21 1. Defendant did not violate FOIA or any other statutory or regulatory provision.

22 2. Plaintiff is not entitled to compel production of items that are not a "record"
23 subject to the FOIA.

24 3. Plaintiff is not entitled to compel production of records exempt from disclosure by
25 one or more exemptions to the Freedom of Information Act, 5 U.S.C. § 552.

26 DATE: April 24, 2024

Respectfully submitted,

27 BRIAN M. BOYTON
28

Principal Deputy Assistant Attorney
General

MARCIA BERMAN
Assistant Branch Director

/s/Michael J. Gerardi

MICHAEL J. GERARDI

Senior Trial Counsel
Civil Division, Federal Programs Branch
U.S. Department of Justice
1100 L St., N.W.
Washington, D.C. 20005
Telephone: (202) 616-0680
E-mail: michael.j.gerardi@usdoj.gov

Counsel for Defendant